IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP NO. 1143 OF 2002

Reserved on : 9th May, 2007

Date of Decision: 19th June, 2007

Partap Singh Thakur	Petitioner
Versus	
Hon'ble High Court of H.P.	Respondent

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]?

For the petitioner: Mr.Rajiv Jiwan, Advocate.

For the respondent: Ms. Ranjana Parmar, Advocate.

Sanjay Karol, J.

Petitioner has filed the present writ petition praying for the following reliefs:-

> "In view of all the facts that have been stated in paras supra, it is most respectfully prayed that this Hon'ble Court may kindly allow this Writ Petition in favour of the petitioner and against the respondent by issuing the following directions to the respondent:
>
> (i) for the production of the relevant record pertaining to the case before this Hon'ble Court for the inspection and perusal of this Hon'ble Court.
>
> (ii) for treating the service period of the petitioner as a Translator w.e.f. 29.6.1993 to 2.6.1994 as regular service for all intents and purposes including reckoning of the same for regular service under the Assured Career Progression Scheme.

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

(iii) for awarding an additional increment under the Assured Career Progression Scheme, ibid, w.e.f. 29.6.2001 instead of 3.6.2002 and re fixation of petitioner's pay accordingly;

(iv) for the payment of an arrear on account of such an additional increment for the period w.e.f. 29.6.2001 to 3.6.2002 with interest;

(v) for the payment of the cost of the litigation to the petitioner for which he has been forced to resort for no fault on his part;

(vi) and any other order/ direction which this Hon'ble Court may deem fit and justified in the facts and circumstances of the case may also kindly be passed."

Vide Office Order dated 29.6.1993 petitioner was appointed as Translator with the respondent in the pay scale of Rs.1800-3200. His appointment was, however, subject to the reversion of Shri M.L.Sharma and Shri G.L.Sharma. Subsequently vide another Office Order dated 3.6.1994 petitioner was appointed as Translator with the respondent on temporary basis in the pay scale of Rs.1800-3200 with immediate effect. Therefore, the appointment of the petitioner in terms of Office Order dated 29.6.1993 was adhoc.

The State of Himachal Pradesh introduced "Assured Career Progression Scheme" (hereinarfter referred to as the Scheme) for its regular employees and the same is amended from time to time. Undisputably this Scheme is also applicable to the employees of the respondent.

In terms of Circular dated 15th December, 1998, which is the amended Scheme, an employee, who has rendered 8 years but less than 16 years service in the same post and has availed benefit of one proficiency step-up under the existing instructions shall be placed in the higher scale without benefit of any increment i.e. his pay will be fixed at the same stage

in the master scale, since he has received one progression and has received accumulated benefit at the time of the pay fixation in the lower revised scale. The said Circular, however, clarified that the other existing conditions governing the grant of proficiency step-up(s) already notified shall continue to be applicable *mutatis mutandis*.

The Circular dated 6th April, 1990 further clarified that service rendered on adhoc basis is not to be counted for the purpose of grant of PROP (proficiency step up) after 31.12.1983 onwards. In other words the period of adhoc service upto 31.12.1983 will be considered as regular service for the purpose of PROP. In relation to a specific query as to whether the adhoc period of service rendered in a post/cadre after 31.12.1983 would also qualify for PROP increments where such service is followed by regular appointment without interruption in the same scale/cadre, it was clarified that adhoc service rendered upto 31.12.1983 will be taken into account for 8/18 years service for PROP. Any period of adhoc service after 31.12.1983 will not be counted. However, the period of subsequent regular service will be computed alongwith the period of adhoc service upto 31.12.1983 for the grant of 8/18 years of service for PROP.

The grievance of the petitioner is that some of his colleagues were given benefit of the Scheme on 20.8.2001 by the respondent while the petitioner was ignored. The representation made by the petitioner requesting for the same was duly considered and rejected vide letter dated 11th December, 2001. Petitioner was informed that since his initial period of service i.e. 29.6.2003 to 2.6.1994 was only on adhoc basis against a vacancy caused due to the deputation of Shri M.L.Sharma, therefore, his case was not covered under the scheme as adhoc service rendered subsequent to 31.12.1983 was not to be taken into account for grant of benefit under the Scheme. He was, however, assured that as and when he would be eligible

his case would be considered for grant of such benefit. Dissatisfied with the response, petitioner again represented to the respondent and the request of petitioner was duly considered and rejected on 30.3.2002.

Subsequently vide office order dated 20th July, 2002, upon completion of continuous 8 years of service in the same cadre petitioner was given benefit of the scheme with effect from 3.6.2002. Petitioner is thus aggrieved by the non-awarding of increment under the scheme to the effect that he should have been granted benefit with effect from 29.6.2001 instead of 3.6.2002. i.e. the period of completion of 8 years of service.

Learned counsel for the petitioner has argued that initial appointment of the petitioner was not on adhoc basis and would not fall within the definition of adhoc appointment as laid by the Apex Court in *Direct Recruit Class II engineering Officer's Association vs. State of Maharashtra and others,* reported in (1990) 2 SCC 715. According to him, petitioner was appointed after completion of all codal formalities since there was no possibility for either Shri M.L.Sharma or Shri G.L.Sharma of being reverted back, therefore, petitioner continued in service and was regularized as such. He further submitted that both the aforesaid officers were officiating against a regular post and since the post of Shri M.L.Sharma as Translator was regular, therefore, petitioner's service against such regular post has to be treated as regular service. He has relied upon a decision in P.S. Mahal vs. Union of India, reported in (1984) 4 SCC 545, in support of this contention. He has further argued that in terms of letter dated 12.1.2004 the Government has now done away with the cut off date prescribed earlier for counting the adhoc service rendered, therefore, the petitioner should be given benefit of the scheme.

Per contra, Smt. Ranjana Parmar, learned counsel for the respondent has submitted that office orders dated 29.9.1993 and 3.6.1994

make it abundantly clear that petitioner's appointment was adhoc and in terms of the policy no benefit can be given to the petitioner.

Perusal of order of appointment dated 29.9.1993 makes it clear that petitioner's appointment was conditional and obviously was not on permanent basis. The fact that his appointment was made after fulfilling all codal formalities would not matter and in any way change the situation. Not only this, office order dated 3.6.1994 whereby the petitioner was subsequently appointed makes it clear that his appointment is on temporary basis with immediate effect. Admittedly, petitioner has accepted this position and not protested at all and rightly so. Having accepted this position, petitioner cannot now be allowed to challenge the position and, therefore, there was no occasion for the respondent to have considered the petitioner's eligibility under the scheme when he had not completed 8 years of service from 3.6.1994. Thus the respondent rightly rejected the representation of petitioner. In my view, there is no infirmity whatsoever in the order passed by the respondent. This view of mine is fortified by a decision of the Apex Court in *State of Punjab and others* vs. *Gurdeep Kumar Uppal and others*, reported in AIR 2001 SC 2691, wherein it has been held:-

> "Learned counsel for the respondents strenuously contended that the respondents who are doctors serving under the State of Punjab are governed by a set of Rules and circulars different from those which were considered in the decided case and therefore the ratio in that case will not be applicable in these cases. We have carefully considered the said contention. We have also considered the circular letter No.4-15-81 IPP/16047 dated 14th December, 1981. On a plain reading of the circular it is clear that the instructions contained therein were based on the decision of the Punjab and Haryana High Court taking the view that ad hoc service

should be taken into account for the purpose. This circular in our view can no longer form the basis of the contention in view of the recent decision by this Court in State of Haryana v. Haryana Venterinary and AHTS Association (2000 AIR SCW 3301 : AIR 2000 SC 3020 : 2000 Lab IC 3127)(supra). Undisputedly the respondent at the time of their appointment were governed by the Punjab Civil Medical Services Class II (Recruitment and Conditions of Service) Rules, 1943. In Clause (5) of Rule 7 of the said Rules it is provided that the seniority of the members, in each branch shall be determined by the dates of their confirmation in service. Further, in the orders appointing the respondents on ad hoc basis, it was specifically stated that they will be governed by the aforementioned Rules. It was further stated in paragraph III of the appointment letter that the appointees seniority will be determined only by merit in which he or she is placed by Punjab Public Service Commission. Thus it is clear that only regular service is to be counted towards seniority.

We do not feel it necessary to delve further into merits of the case in view of the decision of this Court in State of Haryana v. Haryana Veterinary AHTS Association (supra). We are satisfied that the ratio in that case applies to the cases in hand. The resultant position that emerges is that the judgment/orders passed by the High Court holding that ad hoc service is to be included in calculating the period of service for giving the higher scale of pay are unsustainable and has to be vacated. Accordingly, the appeals are allowed and the judgments/ orders of the High Court under challenge are set aside."

Learned counsel for the petitioner has also argued that respondent has treated the service rendered by Shri M.L.Sharma on deputation as regular and even in the case of Shri G.L.Sharma though his promotion order stipulates that the same is subject to reversion of Shri M.L.Sharma yet his service of the corresponding period has been treated to

be regular service. This fact, in my view, would have no bearing on the case of the petitioner. Petitioner is to be governed by the Rules and Scheme of his appointment and service conditions.

In my view the amendment brought in by the Government completely doing away with the cut off date prescribed for counting ad hoc service would not make any difference for the reason that prevalent Rules/Scheme as existed at the time of consideration of the case of the applicant are to be considered.

Further in *State of Uttaranchal and another* vs. *Dinesh Kumar Sharma*, reported in (2007) 1 SCC 683, the Apex Court has held:-

> "24. With regard to the issue as to whether the respondent has the right to claim promotion and seniority from 1995-96 when the vacancy arose or whether seniority will be reckoned from the date of substantive appointment which is 1999, it can be observed that an employee will be considered member of a cadre from the date of his/her substantive appointment in the cadre after selection.
>
> 29. In a recent judgment of this court in Uttaranchal Forest Rangers Association (Direct Recruit) & Ors vs. State of U.P.& Ors, 2006(9) Scale 577, (Dr. AR. Lakshmanan and Tarun Chatterjee), this Court was of the view that seniority has to be decided on the basis of Rules in force on the date of appointment, no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre. Similar view was taken by this Court in the case of K.C.Joshi vs. Union of India, 1992 Suppl (1) SCC 272.
>
> 31. This court in Vinodanand Yadav & Ors v. State of Bihar & Ors, 1994 Suppl. (2) SCC 44, held on an issue regarding the inter se seniority among the direct recruits and promotees the Court applying the ratio of State of Bihar v. Akhouri Sachindananda Nath, 1991 Supp(1) SCC 272, held that the appellants who were direct recruits shall be

> considered senior over the promotees not borne on the cadre when the direct recruits were appointed in service. Hence the gradation list drawn under which promotees were given seniority over direct recruits could not be sustained and was thereby set aside."

The judgment in P.S.Mehal (supra), in my view is not applicable at all. The Apex Court was considering the applicability of quota rule and it was in this background the Court said that vacancy which attracts the applicability of quota rule to the post of Executive Engineers of CPWD is not a vacancy in the permanent post but also a vacancy in the temporary post.

The judgment in *Direct Recruit Class II Engineering Officers' Association (supra)* is also not applicable in view of different facts situation before the Court.

For all the aforesaid reasons, the writ petition is dismissed.

June 19, 2007
(C)

(Sanjay Karol),
Judge